IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17427 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SATISHBHAI PARSHOTTAMBHAI PATEL - Petitioner(s)

Versus

STATE OF GUJRAT & 2 - Respondent(s)

==========

Appearance :

MR MP SHAH for Petitioner(s) : 1,
MS. KRUTI M SHAH for Petitioner(s) : 1,
MS FALGUNI PATEL, AGP for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : - 2
MR DEVANG LATHIGARA for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/12/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the order dated 24th January 2005 passed by the Additional Development Commissioner.

2. Brief facts leading to the present petition are that the the petitioner is a resident of village Gaviyar, Taluka Choryasi, Dist: Surat and respondent No.3 is the elected Sarpanch of Gaviyar Gram Panchayat. A show cause notice came to be issued against respondent No.3 by the District Development Officer on 9.9.04 in which as many as 9 different charges were levelled against respondent No.3. He was called upon to explain these charges failing which action of his removal under section 57(1) of the Gujarat Panchayats Act, 1993 (hereinafter to be referred to as “the said Act”) was proposed. Respondent No.3 replied to the show cause notice and denied the charges. The District Development Officer thereupon proceeded to hold an inquiry against respondent No.3. By an order dated 4th December 2004, the District Development Officer was pleased to conclude that the charges against respondent No.3 are proved. He was, therefore, ordered to be removed from the position of Sarpanch in exercise of powers under section 57(1) of the said Act.

3. Respondent No.3 appealed against the order passed by the District Development Officer before the Additional Development Commissioner. The Additional Development

Commissioner by his order dated 24th January 2005 allowed the appeal of respondent No.3 and set aside his removal ordered by the District Development Officer.

4. The case of the petitioner herein is that the petitioner was instrumental in initiating the inquiry against respondent No.3. It was on the basis of the complaints made by the petitioner that the District Development Officer initiated steps for removal of respondent No.3. It is, therefore, the case of the petitioner that he was a necessary party in the appeal proceedings before the Additional Development Commissioner and the Additional Development Commissioner by allowing the appeal of respondent No.3 without hearing the petitioner committed a gross illegality. This is the short ground on which the petitioner has challenged the order passed by the Additional Development Commissioner on 24.1.2005. It is also contended by the petitioner that the Additional Development Commissioner erred in setting aside the order passed by the District Development Officer categorizing the irregularities committed by respondent No.3 as mere procedural irregularities.

5. Appearing for the petitioner Ms.Kruti Shah submitted that the petitioner had made several complaints against respondent No.3. It was on the basis of these complaints that action came to be initiated against him which ultimately resulted into the order of his removal being passed by the District Development Officer. She submitted that the order passed by the District Development Officer on 4.12.2004 also records this aspect of the matter. Reliance was placed on a Division Bench decision of this Court in the case of Punjabhai v. Jayantilal, VI GLR 849 in support of the contention that the petitioner was a necessary party in appeal proceedings before the Additional Development Commissioner. It was urged that the petitioner had vital interest in the outcome of the appeal and the action of the State Government in allowing the appeal of respondent No.3 without issuing a notice to the petitioner has resulted into violation of principles of natural justice.

6. On the other hand, learned advocate Shri Lathigara appearing for respondent No.3 submitted that the petitioner has no locus standi to file the present petition. He contended that the show cause notice issued against the petitioner by the District Development

Officer on 9.9.04 nowhere states that the basis of the inquiry was any complaint filed by the petitioner. It was further contended that the Division Bench judgment in the case of Punjabhai (supra) was rendered in the background of the provisions contained in Bombay Municipal Boroughs Act, 1925 and in particular sub-section (2) of section 28 thereof wherein the Collector is empowered to take a decision whether a vacancy has arisen or not either on an application made to him by any person or on his own motion. He submitted that the provisions of section 57(1) of the said Act are vitally different and it is between the elected Sarpanch or Upsarpanch and the District Development Officer or the State Government, as the case may be, whether for any alleged misconduct or other reasons stated in sub-section (1) of section 57 that the Sarpanch or Upsarpanch is required to be removed or not.

7. Reliance was placed on a decision of the learned single Judge of this Court in the case of Sabirhusain Sarfuddin Kadri v. Meherunbibi Mahebubali Saiyed and others rendered by the learned single Judge of this Court on 10.12.97 in Special Civil Application No.8947 of 1997. In the said decision, the learned single Judge

was concerned with the provisions contained in section 57 of the said Act. In background of these provisions, the learned single Judge was pleased to come to the conclusion that a complainant on the basis of whose complaint proceedings have been initiated against the Sarpanch for his removal has no locus standi to be heard when the Sarpanch is challenging the action taken against him.

8. Learned advocate Shri Lathigara further pointed out that while disposing of Civil Application No.3015 of 2004 in Special Civil application No.2465 of 2004, by an order dated 14.7.2004, learned single Judge of this Court followed the decision of Sabirhusain Sarfuddin Kadri (supra) for rejecting an application filed by the complainant for being joined as party respondent in the writ petition filed by the Sarpanch challenging his removal.

9. From the material on record and the submissions made before this Court, it can be seen that against respondent No.3, who was an elected Sarpanch of Gaviyar Gram Panchayat, proceedings under section 57(1) of the said Act came to be initiated by issuance of show cause

notice dated 9.9.2004. In the said show cause notice as many as 9 charges were levelled against respondent No.3. One charge included that of refusal on the part of respondent No.3 to provide to the wife of the petitioner copies of certain extracts of village records. This was out of many charges levelled against respondent No.3. The petitioner might have made complaints against respondent No.3. From the show cause notice at least it is not clear whether the complaints filed by the petitioner were instrumental in initiating proceedings against respondent No.3. In any case, only one charge of not supplying certain documents to the wife of the petitioner could be related to the complaints made by the petitioner. Remaining charges pertained to the alleged defaults committed by respondent No.3 in discharge of duties as Sarpanch in executing certain works, etc. Throughout when the proceedings were being conducted against respondent No.3 before the District Development Officer, the petitioner made no attempt to join himself as a party or in any other manner to participate in the proceedings. Even when the appeal was filed by respondent No.3 against his removal, the petitioner made no specific attempt to join himself as party before the Additional Development Commissioner. In the facts of the

present case, therefore, I do not find that the petitioner has a right to insist that the order passed by the Additional Development Commissioner should be set aside since he was not given an opportunity of being heard before allowing the appeal of respondent No.3.

10. The decision of the Division Bench in the case of Punjabhai (supra) can be distinguished. In the said decision, action against the President of the Municipality was taken for his disqualification on account of his remaining absent continuously. Such action was initiated at the instance of the petitioner who was a councillor of the Municipality. As pointed out by the learned advocate Shri Lathigara, under sub-section (2) of section 28 of the Bombay Municipal Boroughs Act, 1925, the Collector had power to initiate such an action either on his own motion or on an application made to him by any person. In the case before the Division Bench, action was initiated by the Collector on an application made by another councillor of the Municipality. It was in this background that the Division Bench found that in the appeal before the Government against the order passed by the Collector, the petitioner-complainant was a necessary party. In the present case, as noted, the action is

envisaged under section 57 of the said Act. Sub-section (1) of section 57 of the said Act empowers the District Development Officer to remove from his office any member of the Panchayat, Sarpanch or as the case may be Upsarpanch if such a member, Sarpanch or Upsarpanch has been guilty of misconduct in the discharge of his duties or of any disgraceful conduct or abuses his power or makes persistent defaults in performance of his duties and functions or has become incapable of performing his duties and functions under the Act. The petitioner, even if it is believed to have made complaints against respondent No.3, kept silent all throughout when the proceedings were initiated and conducted against respondent No.3 by the District Development Officer. Surely as a resident of the village and as a vigilant citizen, the petitioner would have known that such proceedings are being conducted against respondent No.3. Nowhere has the petitioner stated in the petition that he was not aware that the District Development Officer was inquiring into the conduct of respondent No.3. He was thus a fence-sitter so far as the action against respondent No.3 was being undertaken. Even in the appeal proceedings, the petitioner made no attempt to join himself as a party. It was only when the appeal was

allowed and when the order passed by the District Development Officer was set aside by the Additional Development Commissioner that the petitioner approached this Court complaining about his non-hearing by the Additional Development Commissioner. Primarily the question of removal of a member, Sarpanch or Upsarpanch is a matter between the competent authority and the elected member. Especially in the present case where only one out of nine charges levelled against respondent No.3 could be related to any complaint made by the petitioner and especially when the petitioner took no active steps to participate in the proceedings before the District Development Officer initially and the Additional Development Commissioner thereafter, I do not see how the petitioner can maintain the petition for want of locus standi.

11. In the result, the petition is rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)